

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	
	:	
vs.	:	3:CR-09-272
	:	(Kosik, J.)
	:	(Electronically Filed)
MICHAEL T. CONAHAN, and	:	
MARK A. CIAVARELLA, JR.	:	
	:	
Defendants	:	

**MOTION OF DEFENDANT, MICHAEL T. CONAHAN, FOR HEARING
ON THE AUTHENTICITY AND AUDIBILITY OF AUDIO RECORDINGS,
ACCURACY OF TRANSCRIPTS AND THE DELETION OF
IMPERTINENT AND PREJUDICIAL MATERIAL**

The Defendant, Michael T. Conahan, by and through his undersigned counsel, respectfully moves this Honorable Court for a Pretrial Hearing concerning certain audio recordings and in support thereof represents the following:

1. On September 9, 2009, a federal grand jury sitting in this District returned a 48-Count *Indictment* against the Defendants, charging them with violations of 18 U.S.C. § 1962(c) (Count 1), 18 U.S.C. § 1962 (d) (Count 2), 18

U.S.C. §§ 1343, 1346 (Counts 3-10), 18 U.S.C. § 1341, 1346 (Counts 11-14), 18 U.S.C. § 666 (a)(1)(B) (Counts 15-24), 18 U.S.C. § 1956(h) (Count 25), 18 U.S.C. § 1956(a)(1)(B)(i) (Counts 26-30), 18 U.S.C. § 1951 (Counts 31-38), 18 U.S.C. § 371 (Counts 39), 18 U.S.C. § 7206 (Counts 40-47), 18 U.S.C. §§ 982, 1963 (Count 48). (*Doc. Entry 1*).

2. On September 15, 2009, the Defendants voluntarily appeared and were arraigned before the Honorable Magistrate Judge Thomas M. Blewitt, at which time, the Defendants entered pleas of “not guilty” and were released on bail with conditions. (*Doc. Entries 8-23*).

3. Upon an unopposed motion of the Defendants, this Honorable Court extended the deadline within which to file pretrial motions to March 1, 2010 and the instant motion is filed in accordance therewith. (*Doc. Entries 30-33*).

4. On September 15, 2009, counsel for the Defendant delivered to the government an informal discovery request. On or about October 5, 2009, the government sent a letter to counsel for the Defendant indicating that certain items described therein would be disclosed in the near future. On or about October 30, 2009, the government disclosed 2 CD ROMS containing various items.

5. Thereafter, counsel for the Defendant requested additional information including, but not limited to, items governed by 18 U.S.C. § 3500. Although the government provided verbal descriptions of several of the items

requests, the government refused to provide any items in response to counsel's request.

6. Contained in the disclosure on October 30, 2009 and in a previous disclosure, the government provided transcripts of certain recorded conversations involving the Defendant as well as audio recordings which formed the basis for certain transcripts disclosed, but did not indicate which, if any, of the audio recordings and/or transcripts the government intends to introduce as evidence at trial.

7. It is believed and therefore averred that the government intends to introduce said audio recording at the time of trial, which contains impertinent and prejudicial material.

8. It is also believed and therefore averred that the government intends to use a proposed transcript of the conversations contained on the above-referenced audio recording at trial in this matter.

9. From the audio recordings disclosed thus far, it appears that the quality of the audio tapes is such that while portions of the conversation are audible, other portions are largely inaudible and unintelligible.

10. Because of the poor quality of the audio recordings at certain points, counsel for the Defendant believes and therefore avers that counsel will be unable

to determine the accuracy of the Government's proposed transcript to be used at trial when the remaining audio recordings are provided.

11. Consequently, the Defendant requests a hearing pursuant to *U.S. v. Starks*, 515 F.2d 112 (3rd Cir. 1975).

12. The Defendant hereby incorporates by reference his brief in support, which will be filed pursuant to M.D.Pa. Local Rule 7.5, as if fully stated herein.

WHEREFORE, the Defendant requests that this Honorable Court conduct a pretrial hearing to determine the authenticity and audibility of the audio recordings sought to be introduced as well as for the purpose of determining the deletion of impertinent and prejudicial material contained on said audio tapes.

Respectfully submitted,

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Dated: March 1, 2010

Counsel for Michael T. Conahan

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CERTIFICATE OF NON-CONCURRENCE

On March 1, 2010, counsel for the Defendant contacted Assistant United States Attorney Michael A. Consiglio, to discuss the foregoing motion wherein he indicated that the government does not concur in the same at this time. However, the government may file an amended Certificate after reviewing the foregoing Motion.

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CERTIFICATE OF SERVICE

I, Philip Gelso, do hereby certify that on March 1, 2010, I served a true and correct copy of the forgoing *Motion* to the following persons and in the manner indicated below.

SERVED BY ECF:

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